

FORM 43: Letter to Federal Facility Regarding 10 CFR 150.20, Reciprocity

(Name of licensee)

(Address)

On (date), (name of company) conducted [Describe the activity, e.g., "radiography"] in an area of exclusive Federal jurisdiction at your facility. At the time, this company did not have a specific NRC license to conduct this activity and/or had not filed NRC Form-241 with the NRC pursuant to the requirements in 10 CFR 150.20, "Recognition of Agreement State Licenses." Therefore, the activity was conducted in violation of NRC requirements.

The filing of Form-241 provided the NRC with information regarding the location and dates of work being performed by Agreement State licensees (ASLs) in areas under NRC jurisdiction, including areas of exclusive Federal jurisdiction which allows the NRC to perform safety inspections. Such inspections assure the NRC that work is being performed in accordance with NRC requirements and that the public health and safety is protected. Failure to submit the required Form-241 may subject your contractors to civil and criminal sanctions under the Atomic Energy Act of 1954, as amended.

Please ensure that your contracting office is aware that it must meet NRC requirements when conducting activities involving radioactive materials in areas at your facility that are under exclusive Federal jurisdiction. The NRC expects that ASLs will ask Federal facilities whether the areas where radioactive materials are to be used, are areas of exclusive Federal jurisdiction. A copy of guidance that NRC issued to assist ASLs in determining exclusive Federal jurisdiction has been enclosed with this letter.

You should inform your ASL contractors during pre-construction briefings, or otherwise, that they may not perform work in areas of exclusive Federal jurisdiction at your facility unless they first obtain an NRC license or file Form-241 with the NRC pursuant to 10 CFR 150.20. You may contact (name) of the NRC Region Office at phone number to determine whether a particular ASL has filed Form-241 prior to conducting work at your facility.

Although not required, we would appreciate your forwarding this information to the Radiation Protection Officer (RPO) or Safety Coordinator for your facility. [If appropriate, include the following statement: "Recent NRC inspection findings have indicated that your RPO was not aware that licensed activities were being conducted at your facility, or that the area was under exclusive Federal jurisdiction."] The NRC believes that by notifying the installation RPO of the issues surrounding this requirement, both safety and regulatory oversight of activities involving the use of radioactive material at your facility would be improved.

Thank you for your cooperation with the U.S. Nuclear Regulatory Commission. Please contact me at (phone number) if you have any questions concerning this letter.

Sincerely,

(Name), Director
Division of Nuclear Material Safety

Enclosure: Recommended Procedure For Licensees [ASLs]
To Obtain Jurisdiction Determinations

RECOMMENDED PROCEDURE FOR LICENSEES TO OBTAIN JURISDICTION DETERMINATIONS

If you intend to conduct licensed activities at a Federally controlled site (e.g., a Federally controlled site in an Agreement State), the jurisdictional status of the site should be determined. If you are uncertain regarding the jurisdictional status of a proposed work site, it is recommended that you take the following steps:

- a. Obtain specific information regarding the location of the proposed work site (e.g., street address, Range/Township, building or hangar number, distance from a specific intersection, or other identifying details) and identity of the Federal agency controlling the proposed work site.
- b. Call the Federal agency's local contact (contract officer, base environmental health officer, district office staff, regional office staff, etc.) and request information regarding the jurisdictional status of the proposed work site. We recommend that you request such a statement in writing. Otherwise, you should document for your records the name and title of the person at the Federal agency who provided the determination and the date that it was provided.
 - i. If the work site is identified as falling under "Exclusive Federal Jurisdiction" and you are an Agreement State licensee, your notification of proposed work (NRC Form 241) and, if available, a copy of the statement of jurisdiction from the agency should be submitted to NRC. In lieu of submitting an NRC Form 241, Agreement State licensees may apply for a specific NRC license to operate in areas under NRC jurisdiction. If you are an NRC licensee, no action is required.
 - ii. If the work site is identified as other than "Exclusive Federal Jurisdiction" you should contact the Agreement State within which the facility resides.

An Agreement State licensee found to be involved in an area of exclusive Federal jurisdiction without a prior NRC license or without prior filing for reciprocity under 10 CFR 150.20 is potentially subject to escalated enforcement action, including civil penalties and orders. However, NRC will not take enforcement action against an Agreement State licensee for such violations if the licensee has evidence that it received a determination from the Federal agency that the area of work is not under exclusive Federal jurisdiction. This evidence may be a written statement from the Federal agency that provided the determination and the date that it was provided or a written statement signed and dated by the licensee documenting the name and title of the person at the Federal agency who provided the determination that the work site was not in an area of "Exclusive Federal Jurisdiction" and the date the determination was provided.